

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DELAWARE AUDUBON SOCIETY,	)	
CENTER FOR FOOD SAFETY, and	)	
PUBLIC EMPLOYEES FOR	)	
ENVIRONMENTAL RESPONSIBILITY,	)	
	)	
Plaintiffs,	)	Case No. 1:06-cv-223
vs.	)	
	)	
Secretary, United States Department of the	)	
Interior, DALE HALL, Director of	)	
United States Fish And Wildlife Service,	)	
and UNITED STATES FISH AND WILDLIFE	)	
SERVICE, an administrative agency	)	
of the United States Department of the	)	
Interior,	)	
	)	
Defendants.	)	
_____	)	

**PLAINTIFFS REPLY BRIEF IN SUPPORT  
OF THEIR MOTION FOR SUMMARY JUDGMENT**

Vivian A. Houghton, DE Bar #2010  
800 West Street  
Wilmington, DE 19801  
(302) 658-0518

William Rostov  
Kevin Golden  
Center for Food Safety  
2601 Mission Street, Suite 803  
San Francisco, CA 94110  
(415) 826-2770

Paula Dinerstein  
Jeffrey Ruch  
Public Employees For Environmental Responsibility  
2000 P Street, NW; Suite 240  
Washington, D.C. 20036  
(202) 265-7337

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Plaintiffs Delaware Audubon Society, Center for Food Safety, and Public Employees for Environmental Responsibility hereby submit their Reply Brief in Support of their Motion for Summary Judgment.

Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment ("Mem. Opp.") is striking in what it fails to do. Despite their burden to respond, Defendants fail to offer any challenge to Plaintiffs' standing, the factual basis for Plaintiffs' claims, or the law which governs Plaintiffs' claims. Defendants do not contest that, despite the clear statutory requirements of the National Wildlife Refuge System Administration Act, 16 U.S.C. §668dd *et seq.*, they failed to make the required compatibility determinations before allowing farming at the Prime Hook Wildlife Refuge. Nor do they contest that, despite the clear requirements of the National Environmental Policy Act, 42 U.S.C. § 4331 *et seq.*, Defendants failed to perform the required Environmental Assessment and Environmental Impact Statement before allowing the planting of Genetically Modified Crops at the Refuge. Defendants' failure to acknowledge the legal requirements asserted by Plaintiffs here necessitates a court ruling on the legal issues in this case. In completely failing to challenge the merits of Plaintiffs' claims as Rule 56 requires, Defendants have acquiesced to Plaintiff's claims that they violated these statutes in this case.

Defendants have instead hung their hat on the slender reed of mootness, claiming that their post-litigation decision to voluntarily cease allowing farming at the Refuge until the completion of a Comprehensive Conservation Plan renders Plaintiffs' claims no longer capable of adjudication by this Court. The Court should reject Defendants' mootness argument. Defendants have failed to carry their "heavy burden" of showing that their voluntary cessation renders this case moot. With liability unchallenged and a continuing live controversy, the Court should grant Plaintiffs' Motion for Summary Judgment.

**I. DEFENDANTS BEAR A “HEAVY BURDEN” OF PROOF TO ESTABLISH MOOTNESS BASED ON THE ALLEGED VOLUNTARY CESSATION OF ALLOWING FARMING AT THE REFUGE.**

Defendants’ mootness argument rests on one single fact: the alleged voluntary cessation of the thirty-plus year practice of allowing farming on the Refuge, including the recent practice of allowing the use of GMO crops. The Supreme Court has stated “[i]t is well settled that ‘a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice’ for ‘if it did, the courts would be compelled to leave ‘[t]he defendant ... free to return to his old ways.’ ” *Friends of the Earth v. Laidlaw Env’tl Services, Inc.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 and 289 n. 10 (1982)); see *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953) (“voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot”). When the basis for mootness is voluntary cessation, “[a] case *might* become moot if subsequent events made it *absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur.” *Laidlaw*, 528 U.S. at 191 (emphasis added). Precisely because the voluntary cessation of allegedly wrongful activity can be undone by an equally voluntary decision to resume the conduct, courts have consistently held that “[t]he heavy burden of persua[ding] the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness.” *United States v. Concentrated Phosphate Export Ass’n*, 393 U.S. 199, 203 (1968); see *Laidlaw*, 528 U.S. at 189 (quoting *Concentrated Phosphate*).

Defendants completely ignore the Supreme Court’s clear and long-standing requirement of their burden of proof. However, this Court should hold Defendants to the established legal standard governing mootness based on voluntary cessation. Application of that standard shows

that the Defendants have utterly failed to carry their burden, and thus their mootness argument is without merit.

**II. DEFENDANTS HAVE FAILED TO CARRY THEIR HEAVY BURDEN OF PROOF TO ESTABLISH MOOTNESS BASED ON THE ALLEGED VOLUNTARY CESSATION OF ALLOWING FARMING AT THE REFUGE.**

At its core, Defendants’ mootness argument rests on the legally deficient assertion that a “presumption” of future government compliance means that violations cannot be reasonably expected to recur. Mem. Opp. 15- 16. This argument ignores the law on voluntary cessation. A close examination of the law as applied to the facts of this case shows that Defendants have failed to carry their heavy burden.

In cases involving voluntary cessation of challenged conduct by public officials, courts generally require that the cessation of challenged conduct be accompanied by circumstances indicating the change is a “genuine” act of “self-correction” in order to find mootness. *See Magnuson v. City of Hickory Hills*, 933 F.2d 562, 565 (7<sup>th</sup> Cir. 1991); *see also* 13A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3533.7 (2d ed. 2004) (noting that while “[c]ourts are more apt to trust public officials than private defendants to desist from future violations ... the tendency to trust public officials is not complete ... nor is it invoked automatically”). Where the governmental defendant has ceased to engage in the challenged conduct only for practical or strategic reasons—such as avoiding litigation—the cessation does not make the case moot. *See United States v. Gov’t of Virgin Islands*, 363 F.3d 276, 285 (3d Cir. 2004) (holding that where Government of Virgin Islands withdrew from challenged contract just before litigation was initiated and governor offered only general reason that withdrawal was in the “best interest” of the Virgin Islands, voluntary cessation was likely only a strategic move to avoid litigation and therefore case was not moot); *Ragsdale v. Turnock*, 841 F.2d 1358, 1366 (7<sup>th</sup>

Cir. 1988).

The case law suggests that a key factor in determining whether a government defendant's voluntary cessation of alleged wrongful conduct renders a case moot is whether the defendant has shown that the change in conduct was the result of serious deliberation and made for convincing reasons other than the desire to avoid litigation, *see e.g., Gov't of Virgin Islands*, 363 F.3d at 285. Under the facts of this case, this factor strongly points away from a finding of mootness here.

**A. The Facts Of This Case Show That The Most Likely Reason For The Defendants' Voluntary Cessation Of Allowing Farming On The Refuge Was To Avoid Litigation.**

As noted above, the Third Circuit has found that voluntary cessations of wrongful activity by governmental defendants that is motivated by litigation purposes does not render a case moot. In a related vein, where a government defendant has not acknowledged that its past conduct is illegal, courts are less likely to find a cessation of challenged conduct makes the case moot. *See Armster v. United States District Court for the Central District of California*, 806 F.2d 1347, 1359 (9<sup>th</sup> Cir. 1986) (holding that where Justice Department did not concede that challenged conduct was illegal, bare assertion that it would not recur was insufficient to establish mootness because "[i]t has long been recognized that the likelihood of recurrence of challenged activity is more substantial when the cessation is not based on a recognition of the initial illegality of that conduct"); *see also Sasnett v. Litscher*, 197 F.3d 290, 291-92 (7<sup>th</sup> Cir. 1999).

The facts in this case strongly suggest that avoidance of litigation (and the system-wide precedent that a ruling in this case would set) likely motivated the Defendants' voluntary cessation. This can be seen in: (a) the Defendants' conduct immediately prior to the commencement of this litigation; (b) the Defendants' conduct in the settlement negotiations of

this case; and (c) the lateness of Defendants' mootness claim.

*a. Defendants' Conduct Immediately Prior To This Litigation*

Defendants do not offer any rationale why they chose to voluntarily cease their practice of allowing farming at the Refuge. Instead, one has to parse through the vague references and attachments to find some kind of explanation. The most direct is contained in a letter written to Senator Carper's office on August 30, 2007—**one week after the Plaintiffs had filed the present Motion for Summary Judgment**. In that letter, the Regional Director for the Fish and Wildlife Service's Northeast Regional Office claimed that, starting in July 2005 Defendants had received "divergent public comments" about farming at the Refuge, and that these "mixed viewpoints" led to a decision not to enter into cooperative farming agreements. *See* McMahon Declaration, ¶ 15 and Attachment E thereto at pp. 3-4. The contemporaneous evidence in the Administrative Record prepared for this litigation, however, shows no such qualms about allowing farming during late 2005 and early 2006:

\* On December 5, 2005, Anthony Leger, the Regional Chief for the National Wildlife System within FWS, wrote Gene Hocutt at PEER taking the position that farming was a compatible use and that a written Compatibility Determination was not needed. (A.R. US 000803-05) On the issue of GMOs, Legar took the position that GMOs will be considered within the CCP process without any claim that their use need be suspended until the CCP process was completed.

\* On January 13, 2006, Jonathon Schafler, the Prime Hook Refuge Manager, wrote an email to Mark Martell of Delaware Audubon (A.R. US 000807-09) and stated: "No cooperative farmer gets more than a year's contract until we decide the farming policy through the CCP" (AR 808). In other words, Cooperative Farming Agreements would not be banned until the CCP process was completed—only limited to a year in length.

\* In January or February 2006, the Refuge entered into Cooperative Farming Agreements with Fred Bennett III (A.R. US 000840-48) and Carlton Wells & Sons, Inc. (A.R. US 000849-54).



Thus, despite hearing “divergent public comments” and “mixed viewpoints” eight months earlier, all evidence indicates that the Refuge and the FWS were full speed ahead on farming at the Refuge up to the date that Plaintiffs filed their complaint in this case—April 4, 2006.

*b. Defendants’ Conduct In the Settlement Negotiations Of This Case*

Only after the Plaintiffs filed their complaint did the Defendants start to change their tune, and then only slowly. As this Court is aware from the numerous extensions of time sought by the Defendants to answer, the parties negotiated a tentative settlement of this case in August 2006. *See* Docket No. 18 (August 15, 2006 letter from US Attorney to the Court). The settlement broke down in February 2007. *See* Docket Nos. 22 (February 26, 2007 letter from Vivian Houghton to the Court); 23 (February 26, 2007 letter from US Attorney to the Court). Thus, the contacts by the Refuge Manager with the farmers in November 2006 and January 2007 that Defendants now tout as evidence of their decision to voluntarily cease allowing farming, *see* McMahon Decl. ¶ 11 and Attachment B thereto, were likely driven by the tentative settlement of this litigation, not by some serious, deliberative process or policy.

*c. The Lateness Of Defendants’ Mootness Claim*

After the settlement broke down in early February 2007, the Defendants were forced to answer Plaintiffs’ complaint. Their answer, filed February 28, 2007, makes no mention of the decision (supposedly made in 2006) to voluntarily cease allowing farming at the Refuge until the CCP process is completed. Nor does the Answer raise the issue of mootness at all.

The first mention of mootness came in the Status Report filed June 8, 2007, and thereafter Defendants commenced what appears to be a concerted campaign to create a record to support a claim of mootness. On July 26, 2007, the Regional Chief for the National Wildlife Refuge System (who in December 2005 said compatibility determinations were not needed and

GMOs would be dealt with but not prohibited until the CCP process was complete (*see* A.R. US 000803-805)) issued a memo expressing his understanding that farming will not occur until the CCP process was complete. *See* McMahon Decl. at ¶ 12 and Attachment C thereto. On August 6, 2007, the Complex Manager sent a letter to the cooperative farmers to “confirm” that no farming will occur until the CCP process is complete. McMahon Decl. at ¶ 13 and Attachment D thereto. And on August 30, 2007, the above-referenced letter to Senator Carper’s office was sent.

From this evidence, the conclusion is inescapable that Defendants’ mootness claim arose from litigation concerns. No evidence exists that the Defendants did anything to stop farming until well after this case was filed. Defendants, faced with having to respond to Plaintiffs’ Motion for Summary Judgment and the prospect that an award of relief to Plaintiffs would create a damaging precedent for Defendants, are now trying to short-circuit judicial consideration of their conduct via mootness. This threat of bad precedent is not mere speculation. As Defendants themselves admit, farming occurs on 181 out of nearly 500 National Wildlife Refuges nationwide. Mem. Opp. p. 2. Based on limited review of documents from other refuges, the problems of allowing farming without compatibility determinations and allowing the use of GMOs without any environmental assessments is not limited to Prime Hook alone. *See* Rostov Decl. ¶ 4. Defendants’ late assertion of mootness here appears designed to shield the Defendants from the inexorable effects of collateral estoppel on similar claims elsewhere. Such litigation motives preclude findings of mootness. *See Gov’t of Virgin Islands*, 363 F.3d at 285; *Ragsdale*, 841 F.2d at 1366 (finding claim not moot because “the State produced no pre-existing documentation of the policy. We share the district court's concern that the State's position on this provision is asserted only in this litigation”).

Further proving that the reason for the voluntary cessation does not support a finding of mootness is the fact that the Defendants have not acknowledged that their conduct at Prime Hook violated the NWRSA, NEPA, and the APA. In the Factual background section of their brief, Defendants take the position that farming at the Refuge was “consistent with the Refuge system’s Cropland Management guidance,” Mem. Opp. 2, “serves a number of objectives” of the refuge, *id.* at 3, was “as permitted in the Refuge System Manual,” *id.*, and generally argues that both the farming and the use of GMOs was pursuant to and in compliance with various Refuge System policies. *Id.* 4-10. Defendants may be trying to keep their options open for the CCP process to provide the necessary cover for the resumption of farming with GMOs, but the utter failure to recognize that what the Defendants did was unlawful is fatal to the assertion of mootness here. As the Ninth Circuit said in denying a claim of mootness after a government assertion of voluntary cessation, “[i]t has long been recognized that the likelihood of recurrence of challenged activity is more substantial when the cessation is not based on a recognition of the initial illegality of that conduct.” *Armster*, 806 F.2d at 1359. *See Sasnet*, 197 F.3d at 291-92. *See also Walling v. Helmrich & Payne, Inc.*, 323 U.S. 37, 43 (1944) (defendant's decision to cease offering allegedly illegal contract terms two months after complaint was filed but before trial did not moot controversy where defendant failed to acknowledge illegality of conduct).

Quite simply, all evidence points to a litigation motive for the Defendants’ sudden declaration of a voluntary cessation of allowing farming at the Refuge. That litigation motive, plus the utter failure to acknowledge the illegality of the underlying conduct here, means that the Defendants have not carried their heavy burden to show mootness.

**B. Defendants Are Not Entitled To Any “Presumption” That Requires A Finding Of Mootness.**

A large part of Defendants’ argument here rests on the claim of a “presumption” that governmental actors will follow the law such that a promise not to violate the law in the future is sufficient to establish mootness. This is not an accurate statement of the law. The “presumption” of agency “regularity and compliance” Defendants find in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415 (1971) and *United States v. Chemical Foundation*, 272 U.S. 1 (1924) is inapplicable here because (a) it refers to past decision making, having nothing to do with future conduct, (b) neither case dealt with mootness from a voluntary cessation of governmental conduct, and (c) it applies only in the absence of clear evidence to the contrary. In this case, the evidence clearly shows that the Defendants violated the NWRSA by allowing farming without making compatibility determinations for over 10 years and violated NEPA by allowing farming of GMOs without the necessary environmental analyses for six years. Indeed, up to the filing of the complaint these same actors believed they had done nothing wrong despite the fact that Plaintiffs Delaware Audubon and PEER raised the very concerns that drive this lawsuit. *See* A.R. US000803-805, 807-809. It is more than a bit of a stretch to claim that government officials who did not follow the law before will suddenly follow the law now—especially when they have not acknowledged that their previous course of conduct was wrongful.

The cases Defendants cite (Mem. Opp. 15-16) are easily distinguishable. *Coral Springs Street Systems, Inc. v. City of Sunrise*, 371 F.2d 1320 (11<sup>th</sup> Cir. 2004), involved mootness based on the fact that the City had enacted a new ordinance which eliminated the constitutional infirmities of the old code. There is no evidence that Defendants here changed any Refuge System policies, manuals, guidance, or anything else. The assertion that Defendants will not engage in certain conduct in the future is a far cry from enacting a new law. In *Ragsdale v.*

*Turnock*, 841 F.2d 1358 (7<sup>th</sup> Cir. 1988), the court specifically found a claim *not* moot even though the Defendant claimed he would not enforce the challenged reporting requirement because “the State produced no pre-existing documentation of the policy. We share the district court's concern that the State's position on this provision is asserted only in this litigation.” *Id.* at 1366. In other words, a claim of voluntary cessation that appears to be motivated by litigation strategy entitles the government actor to no solicitude or special “presumption” for mootness purposes. The court in *Clarke v. United States*, 915 F.2d 699 (D.C. Cir. 1990) found that the voluntary cessation doctrine *did not even apply* in that case:

We find that non-reenactment of a one-time condition that expired of its own terms cannot be viewed as cessation of conduct . . . In essence, Congress shot an arrow into the air, and it fell to earth. It stretches the words beyond recognition to say that Congress “voluntarily ceased” anything merely because it refrained from shooting some more arrows after the first landed. More important, extension of the doctrine to this case would not fit its basic theory. While the cessation of an ongoing activity pending a lawsuit may well imply an intent to renew the activity once the court has dropped out, this is hardly true of Congress's allowing a one-time provision to pass into history by its own terms.

*Id.* at 705-06. In fact, the only remotely applicable language of *Clarke*—“the cessation of an ongoing activity pending a lawsuit may well imply an intent to renew the activity once the court has dropped out”—supports Plaintiffs’ position because it articulates the very risk inherent in Defendants’ belated claim of voluntary cessation here. In short, Defendants offer no valid legal support for their claim that the mere promise not to allow farming for some unknown period of time in the future justifies a “presumption” or a finding of mootness, especially in light of the clear litigation motive behind Defendants’ voluntary cessation here.

In contrast, the cases cited in section A above involved governmental actors who voluntarily ceased the challenged conduct but whose promise did not result in a finding of mootness. As Wright and Miller states (and cited by the 7<sup>th</sup> Circuit in *Magnuson*, 933 F.2d at

565), while “[c]ourts are more apt to trust public officials than private defendants to desist from future violations ... the tendency to trust public officials is not complete ... nor is it invoked automatically”). Rather, factors such as the Defendants’ motive in claiming mootness must be explored. Because Defendants failed to explain why they decided to voluntarily cease allowing farming at the Refuge, there is simply no evidence of the serious deliberation or long-standing policy that courts require in order to find mootness. Indeed, all the evidence available strongly suggests that the mootness claim here is merely a litigation tactic to avoid a crippling precedent. That is simply not enough to satisfy Defendants’ “heavy burden” in this case and provides this Court with more than enough support to conclude that there is a risk of recurrence of Defendants’ wrongful conduct such that Plaintiffs’ claims are not moot.

**CONCLUSION**

For the reasons set forth above and in Plaintiffs' Brief in Support of their Motion for Summary Judgment, Plaintiffs have established that they are entitled to judgment as a matter of law on all their claims. Because this controversy is not moot, Plaintiffs Delaware Audubon Society, Center for Food Safety, and Public Employees for Environmental Responsibility respectfully request that this Court makes findings of fact and conclusions of law and enter summary judgment in Plaintiffs' favor on all claims.

Respectfully submitted,

DELAWARE AUDUBON SOCIETY, CENTER FOR FOOD  
SAFETY, and PUBLIC EMPLOYEES FOR ENVIRONMENTAL  
RESPONSIBILITY

By: \_\_\_\_\_/S/  
Vivian A. Houghton, Esquire

Vivian A. Houghton DE Bar #2010  
800 West Street  
Wilmington, DE 19801  
(302) 658-0518  
Attorney for Plaintiffs

William Rostov  
Kevin Golden  
Center for Food Safety  
2601 Mission Street, Suite 803  
San Francisco, CA 94110  
(415) 826-2770 | fax (415) 826-0507  
Attorneys for Center for Food Safety

Paula Dinerstein  
Jeffrey Ruch  
Public Employees For Environmental Responsibility  
2000 P Street, NW; Suite 240  
Washington, D.C. 20036  
Tele: (202) 265.7337  
Attorney for Public Employees for Environmental Responsibility

**U.S. Fish & Wildlife Service****Fax**

*National Wildlife  
Refuge System*

**Regional Office, Mountain-Prairie Region**

P.O. Box 25486, Denver Federal Center, Denver Colorado 80225-0486

134 Union Blvd., Lakewood Colorado 80228-1807

Telephone: 303 / 236 4305, Fax 303 / 236 4792

To: J. Frederick Milton

Fax Number:

From: Dave Linchan, 303 236-4308

Date: 9/6/07

Pages to follow:

Subject:

All SUP's allowing GMC's  
on Refuge land. No eligibility  
questionnaires were completed &  
no other documents found addressing  
use of GMC's on Refuges in  
Region 6.

Dave Linchan





**United States Department of the Interior**  
U.S. FISH AND WILDLIFE SERVICE

**COOPERATIVE FARMING AGREEMENT-ADDENDUM**



Rodney Epping  
Cooperator's name

12015 734 Road, Funk, NE 68940  
Address

5/7/2007  
Date of original agreement

Rainwater Basin WMD, Nebraska  
Refuge name and State where located

Pursuant to the provisions of the cooperative farming agreement entered into on the date and by the persons indicated above, for the use of certain lands of the National Wildlife Refuge indicated, the Cooperator and the U.S. Fish and Wildlife Service hereby agree that crops shall be planted and the distribution of the harvest shall be as specified below for the Calendar Year 2007

Farm Unit	Field	Crop or Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres / Fee)		
					Harvested	Unharvested	Fee
Funk WPA	Peterson	roundup ready soybeans	31.0	100			\$775.00
	Pintail	roundup ready soybeans	70.1	100			\$1,752.50
	Mallard North	roundup ready soybeans	68.0	100			\$1,700.00
	Mallard SW	roundup ready soybeans	44.0	100			\$1,100.00
	Mallard SE	roundup ready soybeans	54.0	100			\$1,350.00
Discount: (Reason stated below.)							\$5,008.12
<b>Total:</b>			267.1				<b>\$1,669.38</b>

Special Conditions (if none so state)

The cooperator is preparing the seed bed for preparation of seeding the area with a high diversity native seed mix. The costs of preparation (chemical for Canada thistle control, planting without rows, multiple disking) will dramatically reduce the quality of the crop while still being extremely beneficial for our goals.

\_\_\_\_\_  
(Cooperator's Signature)

\_\_\_\_\_  
(Date)

Brad Krohn Biological Science Technician  
(Issuing Officer's Signature)

5/7/2007

(Date)



**United States Department of the Interior**  
U.S. FISH AND WILDLIFE SERVICE



COOPERATIVE FARMING AGREEMENT-ADDENDUM

Chris Epping  
Cooperator's name

12015 734 Road, Funk, NE 68940  
Address

5/7/2007  
Date of original agreement

Rainwater Basin WMD, Nebraska  
Refuge name and State where located

Pursuant to the provisions of the cooperative farming agreement entered into on the date and by the persons indicated above, for the use of certain lands of the National Wildlife Refuge indicated, the Cooperator and the U.S. Fish and Wildlife Service hereby agree that crops shall be planted and the distribution of the harvest shall be as specified below for the Calendar Year 2007

Farm Unit	Field	Crop or Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres / Fee)		
					Harvested	Unharvested	Fee
Funk WPA	Willet North	rounup ready soybeans	42.0	100			\$1,050.00
	Willet South	roundup ready soybens	24.0	100			\$600.00
Discount: (Reason stated below.)							\$1,237.50
<b>Total:</b>							<b>\$412.50</b>

Special Conditions (if none so state)

The cooperator is preparing the seed bed for preparation of seeding the area with a high diversity native seed mix. The costs of preparation (chemical for Canada thistle control, planting without rows, multiple disking) will dramatically reduce the quality of the crop while still being extremely beneficial for our goals.

\_\_\_\_\_  
(Cooperator's Signature)

Brad Krohn Biological Science Technician  
(Issuing Officer's Signature)

\_\_\_\_\_  
(Date)

5/7/2007

(Date)



**United States Department of the Interior**  
U.S. FISH AND WILDLIFE SERVICE  
COOPERATIVE FARMING AGREEMENT-ADDENDUM



Tim Erickson  
Cooperator's name

73869 R Road.Funk, NE 68940  
Address

5/7/2007  
Date of original agreement

Rainwater Basin WMD, Nebraska  
Refuge name and State where located

Pursuant to the provisions of the cooperative farming agreement entered into on the date and by the persons indicated above, for the use of certain lands of the National Wildlife Refuge indicated, the Cooperator and the U.S. Fish and Wildlife Service hereby agree that crops shall be planted and the distribution of the harvest shall be as specified below for the Calendar Year **2007**

Farm Unit	Field	Crop or Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres / Fee)		
					Harvested	Unharvested	Fee
Johnson WPA	Big Marsh Unit	round-up ready soybean	104.0	100			\$2,600.00
Discount: (Reason stated below.)							\$1,950.00
<b>Total:</b>							<b>\$650.00</b>

Special Conditions (if none so state)

The cooperator is preparing the seed bed for preparation of seeding the area with a high diversity native seed mix. The costs of preparation; chemical for Canada thistle control, planting 'no hill' rows, multiple discing, and the chance of not harvesting due to water will dramatically reduce the quality of the crop while still being extremely beneficial for our goals. ATV use is allowed to check unit throughout the season.

\_\_\_\_\_  
(Cooperator's Signature)

Brice Krohn Supervisory Range Technician  
(Issuing Officer's Signature)

\_\_\_\_\_  
(Date)

5/7/2007

(Date)





**United States Department of the Interior**  
U.S. FISH AND WILDLIFE SERVICE  
**COOPERATIVE FARMING AGREEMENT-ADDENDUM**



Lavern Dannehl  
Cooperator's name

43634 Rd 736, Bertrand, NE 68927  
Address

5/7/2007  
Date of original agreement

Rainwater Basin WMD, Nebraska  
Refuge name and State where located

Pursuant to the provisions of the cooperative farming agreement entered into on the date and by the persons indicated above, for the use of certain lands of the National Wildlife Refuge indicated, the Cooperator and the U.S. Fish and Wildlife Service hereby agree that crops shall be planted and the distribution of the harvest shall be as specified below for the Calendar Year 2007

Farm Unit	Field	Crop or Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres / Fee)		
					Harvested	Unharvested	Fee
Peterson WPA	North	rounup ready soybeans	9.0	100			\$225.00
Discount: (Reason stated below.)							\$225.00
<b>Total:</b>							<u>\$0.00</u>

Special Conditions (if none so state)

The cooperator is preparing the seedbed for preparation of seeding the area with a high diversity native seed mix in the fall/winter of 2007. The costs of preparation (disking, spraying, planting without rows) outweigh the income of the nine acres. The area was flooded and too wet for planting in 2006.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Cooperator's Signature)

\_\_\_\_\_  
(Date)

Brad Krohn Biological Science Technician  
(Issuing Officer's Signature)

5/7/2007

(Date)

**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**U. S. Fish and Wildlife Service**

**COOPERATIVE FARMING AGREEMENT**

COOPERATOR'S NAME	ADDRESS
Robert Olstad 701-488-2295 (H) 701-430-0868 (C)	R.R. 1 Box 71 Galesburg, ND 58035

PERIOD OF USE	REFUGE NAME, STATE AND LOCATION
October 1, 2005 through March 1, 2010	Fullers Lake WPA - Steele County T 144 N., R 55 W., SE1/4 Section 12

The U.S. Fish and Wildlife Service (FWS), for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the FWS indicated below, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:

Year	Fields(s)	Crop	Tillable Acres	Rental Fee	Deductions	Balance
2006	Field 1	BREAKOUT Soybeans (Organic)	75	75 acres @ \$43/acre = \$3,225	Disk 4 times (\$6.50/ac) + Cultivate 2 times (\$6.50/ac) (Weed Control)	Fee = \$3,225 - 25% Gov. share food plot = \$2,418.75 - \$2,925 Deduction = \$506.25 Credit (Carry-over to 2007)
2007	Field 1	Corn (Round-Up Ready)	75	75 acres @ \$43/acre = \$3,225	Spray Round-up (\$12.75/ac) (Weed Control)	Fee: \$3,225 - \$506.25 credit carry-over - \$956.25 Deduction = \$1,762.50 Due (Carry-over to 2008)
2008	Field 1	Soybeans	75	75 acres @ \$43/acre = \$3,225	Spray Pursuit (\$12.75/ac) (Weed Control)	Fee: \$3,225 Fee + \$1,762.50 Carryover - \$956.25 Deduction = \$4,031.25 Due (Carry-over to 2009)
2009	Field 1	Soybeans (Round-Up Ready)	75	75 acres @ \$43/acre = \$3,225	Spray Round-Up (\$12.75/ac) (Weed Control)	Fee: \$3,225 Fee + \$4,031.25 carry-over - \$956.25 = \$6,300 Due (Carry over to 2010)
2010	Field 1	Purchase Grass Seed			Purchase grass seed and chemical (actual cost, receipt required) cost \$4,725  Valley City WMD will determine seed mixture and chemical to purchase. The WMD will seed grass and apply chemical at the appropriate time.	\$6,300 carry-over - \$4,725 grass seed and chemical = \$1,575.

1. The Cooperator agrees that agricultural crops of the type and acreage specified above must be planted during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the agreement must be made prior to planting season by an addendum, which is attached to and becomes part of the agreement.
2. These privileges are granted by the Fish and Wildlife Service and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations, expressed or implied therein, and to the conditions and requirements appearing on the reverse side, and any special conditions indicated below.





Lake Andes Refuge Complex  
38672 291<sup>st</sup> Street  
Lake Andes, SD 57356  
Telephone: 605-487-7603

## COOPERATIVE FARMING AGREEMENT

Cooperator's Name Calvin Veurink				Address: 38046 272 <sup>nd</sup> Street Harrison, SD 57344 605/946-5786		
Period of Use: From: May 1, 2006 To: December 31, 2010				Unit and Location: New Holland WPA Douglas County		
The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the National Wildlife Refuge System indicated above, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:						
Farm Unit	Field	Crop or Crop Group	Acres	Cooperator's Share (% or Acres)	Government's Share Harvested Unharvested	
2006	1	round-up ready crops (corn preferred)	~20	100%	0	0
2007		same as 2006	"	100%	0	0
2008		same as 2006	"	100%	0	0
2009		same as 2006	"	100%	0	0
2010		same as 2006	"	100%	0	0
TOTALS						

- The Cooperator agrees that agricultural crops of the type and acreages specified above must be planted, cultivated harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in made prior to planting season by an addendum, which is attached to and become part of the agreement.
- These privileges are granted by the U. S. Fish and Wildlife Service, and accepted by the undersigned, subject to t obligations, and reservations, expressed or implied therein, and to the conditions and requirements appearing on the r special conditions indicated below.
- SPECIAL CONDITIONS: (If none, so state)
  - The Service's objective for this management is to significantly reduce the presence of noxious weeds specifically Canada thistle.
  - Permittee may farm as much of the WPA as is possible, east of non-maintained road.
  - Permittee will control noxious weeds with the use of Roundup herbicide on all farmed areas as well as areas immediately adjacent to the farm field.
  - Permittee will bear all costs associated with planting, cultivating, spraying and harvesting of the crops.
  - The WPA will remain open to all hunting fishing and trapping as allowed by State regulations.
  - The Fish and Wildlife Service bears no liability for crop loss or damage from flooding, wind, hail, wildlife, hunters, or any other perils.
  - The Fish and Wildlife Service bears no liability for damage to farm equipment from rocks, trees or other objects.

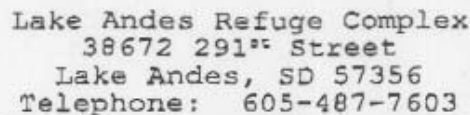
Calvin Veurink  
(Cooperator's Signature)

5-21-06

DATE

Mark Henson  
(Issuing Officer's Signature and Title)  
Wetland Manager

5-12-06



## COOPERATIVE FARMING AGREEMENT

Cooperator's Name Willis DeLange			Address: 38085 SD Hwy 44 Corsica, SD 57328 605/946-5544			
Period of Use: From: May 1, 2006 To: December 31, 2010			Unit and Location: New Holland WPA Douglas County			
The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the National Wildlife Refuge System indicated above, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:						
Farm Unit	Field	Crop or Crop Group	Acres	Cooperator's Share (% or Acres)	Government's Share	
					Harvested	Unharvested
2006	1	round-up ready crops (corn preferred)	300	100%	0	0
2007		same as 2006	"	100%	0	0
2008		same as 2006	"	100%	0	0
2009		same as 2006	"	100%	0	0
2010		same as 2006	"	100%	0	0
TOTALS						

10. The Cooperator agrees that agricultural crops of the type and acreages specified above must be planted, cultivated and harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in acreage prior to planting season by an addendum, which is attached to and become part of the agreement.

. These privileges are granted by the U. S. Fish and Wildlife Service, and accepted by the undersigned, subject to obligations, and reservations, expressed or implied therein, and to the conditions and requirements appearing on the special conditions indicated below.

SPECIAL CONDITIONS: (If none, so state)

The Service's objective for this management is to significantly reduce the presence of noxious weeds specifically, Canada thistle.

Permittee may farm as much of the WPA as is possible, south of the evergreen trees and west of the non-maintained road.

Permittee will control noxious weeds with the use of Roundup herbicide on all farmed areas as well as areas immediately adjacent to the farm field.

Permittee will bear all costs associated with planting, cultivating, spraying and harvesting of the crops.

The WPA will remain open to all hunting fishing and trapping as allowed by State regulations.

5. The Fish and Wildlife Service bears no liability for crop loss or damage from flooding, wind, hail, wildlife, hunters, or any other perils.

. The Fish and Wildlife Service bears no liability for damage to farm equipment from rocks, trees or other objects.

Willard Long 5/16/66  
(Cooperator's Signature) DA

*Mary Thomas* 5-12-06  
(Issuing Officer's Signature and Title)  
Wetland Manager



Year	1	Winter wheat	"	67%	33%	0
2008	1	round-up ready soybeans	"	67%	33%	0
TOTALS	1		B1			

1. The Cooperators agree that agricultural crops of the type and acreages specified above must be planted and harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the Agreement must be made prior to planting season by an addendum, which is attached to and become part of the agreement.
2. These privileges are granted by the U. S. Fish and Wildlife Service (Service), and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations, expressed or implied therein, and to the conditions and requirements appearing on the reverse side, and any special conditions indicated below.
3. SPECIAL CONDITIONS: (If none, so state)
  - A. The Service's objective for this management is to convert monoculture tame grass grassland to a native grass/forb grassland to improve nesting cover and species diversity.
  - B. Cooperators will control noxious weeds with the use of a glyphosate-type herbicide on all farmed areas.
  - C. The Service will be responsible for 1/3 of the cost associated with fertilizing. Cooperators will bear all other costs associated with planting, spraying and harvesting of the crops.
  - D. The Service bears no liability for crop loss or damage from flooding, wind, hail, wildlife, or any other perils.
  - E. The Fish and Wildlife Service bears no liability for damage to farm equipment from rocks, trees or other objects.
  - F. Cooperators will pay all fertilizer bills in-full each year during this agreement and provide documentation to the Service of what the Service's 1/3 share of this bill would have been. Cooperators will also retain all crop proceeds each year during this agreement and provide documentation to the Service of what the Service's 1/3 share of the proceeds would have been. At the end of this agreement, the Service's total cost for fertilizer will be subtracted from the total crop proceeds due to the Service resulting in an amount due to the Service.
  - G. Cooperators will be responsible for this amount due and agree to purchase native grass and forb seeds for use on the prairie restoration project.

*Tim Weber*

6-23-06

*Michael J. Bryant*

6-23-06

6/23/06

DATE

Issuing Office's Signature and Title

DATE

Cooperator's Signatures

08/24/2007 FRI 15:51 [TX/RX NO 9375]





Lake Andes Refuge Complex  
38672 291<sup>st</sup> Street  
Lake Andes, SD 57356  
Telephone: 605-487-7603

RECEIVED

OCT 31 2006

LAKE ANDES NWR

# COOPERATIVE FARMING AGREEMENT

Cooperator's Name Mike Wojciechowski			Address: 37964 280 <sup>th</sup> St Geddes, SD 57342 h) 605 243-2202			
Period of Use: From: October 2, 2006 To: April 15, 2009			Unit and Location: Putnam WPA Charles Mix County			
The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the National Wildlife Refuge System indicated above, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:						
Farm Unit	Field	Crop or Crop Group	Acres	Cooperator's Share (% or Acres)	Government's Share Harvested Unharvested	
2007	1	Roundup Ready crops	~80	67%	33%	0
2008		Roundup Ready crops	"	67%	33%	0
2009		Roundup Ready soybeans	"	67%	33%	0
TOTALS						

1. The Cooperator agrees that agricultural crops of the type and acreages specified above must be planted, cultivated, and harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the agreement must be made prior to planting season by an addendum, which is attached to and become part of the agreement.

2. These privileges are granted by the U. S. Fish and Wildlife Service, and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations, expressed or implied therein, and to the conditions and requirements appearing on the reverse side, and any special conditions indicated below.

## 3. SPECIAL CONDITIONS: (If none, so state)

1. The Service's objective for this management is to significantly reduce the presence of non-native, invasive plants to all successful restoration of native grasses in the spring of 2010.
2. Cooperator may farm as much of the WPA as is possible, south of the cross fence.
3. Cooperator will control noxious weeds with the use of Roundup herbicide on all farmed areas as well as areas immediately adjacent to the farm field.
4. Cooperator will bear all costs associated with planting, cultivating, spraying and harvesting of the crops.
5. The field will remain open to hunting and trapping as allowed by State and Federal regulations.
6. The Fish and Wildlife Service bears no liability for crop loss or damage from flooding, wind, hail, wildlife, hunters, or any other perils.
7. The Fish and Wildlife Service bears no liability for damage to farm equipment from rocks, trees or other objects.
8. Up to 75% of the government's share will be a payment-in-kind used to purchase native grass seed for this restoration.

*Mike Wojciechowski*  
(Cooperator's Signature)

10-24-06  
DATE

*Michael J. Benda*  
(Issuing Officer's Signature and Title)  
Refuge Manager

10/13/06  
DATE

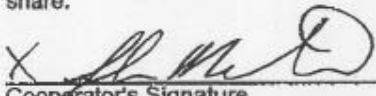
DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service  
COOPERATIVE FARMING AGREEMENT

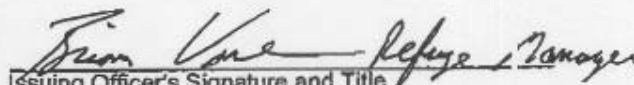
Cooperator's name John Martinson 644-2617	Address: 9558 72 <sup>nd</sup> St. NE Edmore, ND 58330
Period of use: From: <u>May</u> , 2007 To: <u>October</u> , 2011	Refuge Name and State where located Breakey WPA, Ramsey County T157N., R62W., Sec. 2, SE1/4

The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the National Wildlife Refuge System indicated above, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:

Farm Unit	Field	Year	Crop or Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres)	
						Harvested	Unharvested
Breakey WPA	T.157N., R.62W., Sec.2, SE1/4	2007	Breakout sod and cultivate	72	0		72 (seedbed prep)
		2008	summer fallow and pick rock	72	0		72 (seedbed prep)
		2009	Cooperator will seed small grain crop	72	72		0
		2010	Cooperator will seed RU Ready soybeans	72	72		0
		2011	Cooperator will seed RU Ready soybeans	72	72		72 (coop purchased grass seed)

1. The Cooperator agrees that agricultural crops of the type and acreage specified above must be planted, cultivated, and harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the agreement must be made prior to planting season by an addendum, which is attached to and becomes part of the agreement.
2. These privileges are granted by the U.S. Fish and Wildlife Service, and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations contained therein.
3. Special conditions: (If none, so state)
  - a) Cooperator will ensure that the pesticide will be applied in accordance with label restrictions and according to Fish and Wildlife Service Pesticide Use Proposal.
  - b) Cooperator will purchase grass seed mixture (to be determined).
  - c) No tillage will take place in the fall of 2011. Grass mixture will be no-till seeded into soybean stubble by FWS in the fall of 2011 or the spring of 2012.
4. Cooperative farmers are prohibited from participating in USDA farm subsidy programs involving refuge cropland, except for crop insurance on their share of refuge crops. In situations such as the 1988 drought relief legislation, managers may sign USDA certifications that an individual farmed certain acres on a refuge. This acreage should only include the cooperator's acres, not the refuge share.

  
 Cooperator's Signature  
 Date 7-10-07

  
 Issuing Officer's Signature and Title  
 Date 6/15/07



DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service  
COOPERATIVE FARMING AGREEMENT

Cooperator's name Rick Knoke 644-2666 644-2648 (shop)	Address: 7155 100 <sup>th</sup> AVE NE Edmore, ND 58330
Period of use: From: May 2006 To: May 2010	Refuge Name and State where located Martinson WPA Devils Lake WMD Devils Lake, ND

The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the National Wildlife Refuge System indicated above, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:

Farm Unit	Field	Year	Crop or Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres)	
						Harvested	Unharvested
Martinson WPA	T.156N., R.61W., S1/2 sec.31,	2006	Hay 144 acres & breakout sod	144	144		144 (seedbed prep)
		2007	Cultivate 2x and Seed roundup ready soybeans	65	65		65 (seedbed prep)
		2008	Seed roundup ready soybeans	144	144		144 (seedbed prep)
		2009	Seed roundup ready soybeans	144	144		144 (seedbed prep)
		2010	Seed roundup ready soybeans	144	144	Cooperator purchased grass seed	

1. The Cooperator agrees that agricultural crops of the type and acreage as specified above must be planted, cultivated, and harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the agreement must be made prior to planting season by an addendum, which is attached to and becomes part of the agreement.

2. These privileges are granted by the U.S. Fish and Wildlife Service, and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations contained therein.

3. Special conditions: (If none, so state)

- Cooperator will ensure that the pesticide will be applied in accordance with label restrictions and according to Fish and Wildlife Service Pesticide Use Proposal.
- Cooperator will purchase grass seed mixture (to be determined).
- No tillage will take place in the fall of 2007, 2008, 2009 and 2010. Grass mixture will be no-till seeded into soybean stubble by FWS in the spring of 2011.

4. Cooperative farmers are prohibited from participating in USDA farm subsidy programs involving refuge cropland, except for crop insurance on their share of refuge crops. In situations such as the 1988 drought relief legislation, managers may sign USDA certifications that an individual farmed certain acres on a refuge. This acreage should only include the cooperator's acres, not the refuge share.

Cooperator's Signature \_\_\_\_\_

Issuing Officer's Signature and Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

3-1492 (Rev. 3/78)

DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service  
COOPERATIVE FARMING AGREEMENT

Cooperator's name Rick Knoke 644-2666 644-2648 (shop)	Address: 7155 100 <sup>th</sup> AVE NE Edmore, ND 58330
Period of use: From: May 2007 To: May 2009	Refuge Name and State where located Martinson WPA Devils Lake WMD Devils Lake, ND

The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the National Wildlife Refuge System indicated above, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:

Farm Unit	Field	Year	Crop or Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres)	
						Harvested	Unharvested
Martinson WPA	T.168N., R.62W. NE1/4, sec.35, fruc. NW1/4, Sec 36	2007	Cultivate 3X and seed roundup ready soybeans	105	105		105 (seedbed prep)
		2008	Seed roundup ready soybeans	105	105		105 (seedbed prep)
		2009	Cooperator will purchase all or a percentage of grass seed mix determined by the FWS (FWS will plant the grass)	105	0		105 grass seed provided by cooperator Planted by the FWS

- The Cooperator agrees that agricultural crops of the type and acreage specified above must be planted, cultivated, and harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the agreement must be made prior to planting season by an addendum, which is attached to and becomes part of the agreement.
- These privileges are granted by the U.S. Fish and Wildlife Service, and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations contained therein.
- Special conditions: (If none, so state)
  - Cooperator will ensure that the pesticide will be applied in accordance with label restrictions and according to Fish and Wildlife Service Pesticide Use Proposal.
  - Cooperator will purchase grass seed mixture (to be determined).
  - No tillage will take place in the fall of 2007 or spring 2008. Grass mixture will be no-till seeded into soybean stubble by FWS in the spring of 2009.
- Cooperative farmers are prohibited from participating in USDA farm's subsidy programs involving refuge cropland, except for crop insurance on their share of refuge crops. In situations such as the 1988 drought relief legislation, managers may sign USDA certifications that an individual farmed certain acres on a refuge. This acreage should only include the cooperator's acres, not the refuge share.

Cooperator's Signature \_\_\_\_\_

Issuing Officer's Signature and Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_



DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service  
COOPERATIVE FARMING AGREEMENT

*\* Amended \**

Cooperator's name Knoke 644-2666 644-2648 (shop)	Address: HC1 Box 25A Edmore, ND
Period of use: From: July 20 03 To: October 20 07	Refuge Name and State where located Martinson WPA Devils Lake WMD Devils Lake, ND

The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the National Wildlife Refuge System indicated above, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:

Farm Unit	Field	Year	Crop or Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres)	
						Harvested	Unharvested
Martinson WPA	T.158N., R.62W. W1/2 sec. 35	2003	Hay/spray/ breakout	231	231 (Hay)		231 (seedbed prep)
		2004	summer fallow	231	0		231 (seedbed prep)
		2005	small grain	231	231	0	0
		2006	roundup ready soybeans	231	231	0	0
		2007	Oats (cover crop) seed grass/weed control	116	231 (oats)		231 (grass)

- The Cooperator agrees that agricultural crops of the type and acreages specified above must be planted, cultivated, and harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the agreement must be made prior to planting season by an addendum, which is attached to and becomes part of the agreement.
- These privileges are granted by the U.S. Fish and Wildlife Service, and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations contained therein.
- Special conditions: (If none, so state)
  - Cooperator will ensure that the pesticide will be applied in accordance with label restrictions and according to Fish and Wildlife Service Pesticide Use Proposal.
  - Cooperator will pack field before/after soybeans are seeded with USFWS provided packer
  - Cooperator will purchase grass seed mixture (attached), and seed grass in spring 2007 with an oats cover crop. Grass will be seeded at a 45 degree angle to oats seeding between May 1, 2007-May 30, 2007.
  - No tillage will take place in the fall of 2006 or spring 2007. Grass/oats mixture will be no-till seeded into soybean stubble.
- Cooperative farmers are prohibited from participating in USDA farm subsidy programs involving refuge cropland, except for crop insurance on their share of refuge crops. In situations such as the 1988 drought relief legislation, managers may sign USDA certifications that an individual farmed certain acres on a refuge. This acreage should only include the cooperator's acres, not the refuge share.

*[Signature]*  
Cooperator's Signature  
Date 5/14/03

*[Signature]*  
Issuing Officer's Signature and Title  
Date 5/8/03

DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service  
COOPERATIVE FARMING AGREEMENT

Cooperator's name Rick Knoke      644-2666 644-2648 (shop)	Address:      HC1 Box 25A Edmore, ND
Period of use: From:    July                      , 20 03 To:    October                , 20 07	Refuge Name and State where located Martinson WPA Devils Lake WMD Devils Lake, ND

The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the National Wildlife Refuge System indicated above, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:

Farm Unit	Field	Year	Crop or Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres)	
						Harvested	Unharvested
Martinson WPA	T. 156N., R. 62W., W1/2 sec. 35	2003	Hay/spray/breakout	231	231(Hay)		231 (seedbed prep)
		2004	summer fallow	231	0		231 (seedbed prep)
		2005	small grain	231	231	0	0
		2006	roundup ready soybeans	231	231	0	0
		2007	roundup ready soybeans	231	231		231 (grass)

1. The Cooperator agrees that agricultural crops of the type and acreage specified above must be planted, cultivated, and harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the agreement must be made prior to planting season by an addendum, which is attached to and becomes part of the agreement.

2. These privileges are granted by the U.S. Fish and Wildlife Service, and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations contained therein.

3. Special conditions: (If none, so state)

- a) Cooperator will ensure that the pesticide will be applied in accordance with label restrictions and according to Fish and Wildlife Service Pesticide Use Proposal.
- b) Cooperator will pack field before/after soybeans are seeded with USFWS provided packer
- c) Cooperator will purchase grass seed mixture (attached). The Service will seed grass in spring 2008.
- g) No tillage will take place in the fall of 2006 or spring 2007. Grass/oats mixture will be no-till seeded into soybean stubble.

4. Cooperative farmers are prohibited from participating in USDA farm subsidy programs involving refuge cropland, except for crop insurance on their share of refuge crops. In situations such as the 1988 drought relief legislation, managers may sign USDA certifications that an individual farmed certain acres on a refuge. This acreage should only include the cooperator's acres, not the refuge share.

Cooperator's Signature \_\_\_\_\_

Issuing Officer's Signature and Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

3-1492 (Rev. 3/78)



**COOPERATIVE FARMING AGREEMENT  
OFFICE RECORD**

**Agreement Number 07-001-CFA**

**This form is estimates equitability of the Cooperative Farming Agreement shares**

<b>Cooperator's Name</b>	<b>Address</b>
Tim and Randy Neva	8254 14 <sup>th</sup> St. SE Kensal, ND 58455

<b>Period of Use</b>	<b>Refuge Name, Location</b>
From: <u>Fall 2006</u> To: <u>Fall 2011</u>	Arrowwood NWR, T. 133 N., R. 64 W., section 34

<b>YEAR</b>	<b>FIELD</b>	<b>CROP</b>	<b>ACRES</b>	<b>FEE</b>	<b>DEDUCTIONS</b>	<b>BALANCE</b>
2006	D10	Hay/Spray Roundup	137	\$3.50/acre for hay due to weeds and rough terrain = \$480	Chemical Weed Control @ \$12.75/acre = \$1,747 (NRCS Oct. 2006 Cost Data)	\$1,267 credit applied to 2007
2007	D10	Roundup-Ready Soybeans	137	Estimated "Return to Labor & Mgmt." from 2007 NDSU Extension Service "Farm Mgmt Planning Guide" = \$33.50/acre; govt.'s 25% = \$8.37/acre, or \$1,147	Chisel-plow to smooth field (seedbed prep) \$9.00/acre = \$1,233	+ \$1,267 credit - \$1,147 fee + \$1,233 deductions = + \$1,353 to be applied in 2008
2008	D10	Spring wheat	137	Estimated return = \$5.93; govt.'s 25% = \$203		\$1,353 credit carried over - \$203 fee = + \$1,150 to be applied in 2009

2009	D10	Roundup-Ready Soybeans	137	Estimated "Return to Labor & Mgmt." from 2007 NDSU Extension Service "Farm Mgmt Planning Guide = \$33.50/acre; govt.'s 25% = \$8.37/acre, or \$1,147	\$1,150 credit carried over -\$1,147 fee = +\$3
2010	D10	Spring wheat	137	Estimated return = \$5.93; govt.'s 25% = \$203	\$3 credit carried over -\$203 fee \$200
2011	D10	Roundup-Ready Soybeans	137	Estimated "Return to Labor & Mgmt." from 2007 NDSU Extension Service "Farm Mgmt Planning Guide = \$33.50/acre; govt.'s 25% = \$8.37/acre, or \$1,147	No credit carried over -\$1,147 fee \$1,147



DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service  
Arrowwood National Wildlife Refuge  
Pingree, ND 58476  
COOPERATIVE FARMING AGREEMENT

Agreement Number 07-001

Cooperator's Name: Tim Neva and Randy Neva (701) 952-2881 & 701-952-2118 (cell 701-320-9931)	Address: 818 17 <sup>th</sup> St. NE Jamestown, ND 58104
Period of Use: From: <u>March 1, 2007</u> To: <u>September 30, 2012</u>	Unit and County Where Located  Arrowwood NWR – Unit D10 (Stutsman County)

The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands on the National Wildlife Refuge System indicated above, for the cultivation, production and/or harvesting of agricultural crops, on a share basis as specified below:

Year	Field	Crop or Crop Group	Acres	Cooperator's Share (Percent)	Government's Share (Percent)	
					Harvested	Unharvested
2006	D10	Hay & Spray Roundup	137			
2007	D10	RoundUP Ready (RR) Soybeans	137			
2008	D10	Small Grains	137			
2009	D10	RR Soybeans	137			
2010	D10	Small Grains	137			
2011	D10	RR Soybeans	137			

1. The Cooperator agrees that agricultural crops of the type and acreage specified above must be planted, cultivated, and harvested during the year indicated. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the agreement must be made prior to planting season by an addendum, which is attached to and becomes part of the agreement.
2. These privileges are granted by the U.S. Fish and Wildlife Service, and accepted by the undersigned, subject to the terms, covenants, obligations and reservations, expressed or implied therein, and to the conditions and requirements appearing on the reverse side and any special conditions indicated on an attached page.

\_\_\_\_\_  
(Cooperator's Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_, Wildlife Refuge Specialist  
(Issuing Officer's Signature and Title)

\_\_\_\_\_  
(Date)



DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service

COOPERATIVE FARMING AGREEMENT

**COPY**

<b>Cooperator's Name:</b> Fred Shelton				<b>Address:</b> Route 1 Box 217A Amoret, MO 64722		
<b>Period of Use:</b> January 1, 2007 - December 31, 2008				<b>Refuge Name/State Where Located:</b> Marais des Cygnes NWR Kansas		
The U.S. Fish and Wildlife Service, for and in consideration of the mutual benefits arising hereunder, grants to the Cooperator named above, privileges of using lands of the National Wildlife Refuge System indicated above, for the cultivation, production, and/or harvesting of agricultural crops, on a share basis as specified below:						
Farm Unit	Field	Crop/Crop Group	Acres	Cooperator's Share (% or acres)	Government's Share (% or acres)	
					Harvested	Unharvested
S-07	5	Winter Wheat	20.55	100%		
	6	Winter Wheat	15.32	100%		
	7	Winter Wheat	28.87	100%		
	8	Winter Wheat	30.76	100%		
	9	Soybeans to Winter Wheat	88.19	75%	25%	
S-08	5	Roundup Ready Soybeans	20.55	100%		
	6	Roundup Ready Soybeans	15.32	100%		
	7	Roundup Ready Soybeans	28.87	100%		
	8	Roundup Ready Soybeans	30.76	100%		
	9	Winter Wheat	88.19	75%		25%
	5	Native Grass Mixture (see attached special conditions)	20.0			100%
	6	Native Grass Mixture (see attached special conditions)	15.0			100%
	7	Native Grass Mixture (see attached special conditions)	30.0			100%
	8	Native Grass Mixture (see attached special conditions)	30.0			100%

1. The Cooperator agrees that agricultural crops of the type and acreages specified above must be planted, cultivated and harvested during the first year of operation. If this agreement is for more than one year, the type of crop, acreage, and distribution may be altered or modified annually, following the first year of operation, by mutual consent of both parties. Changes in the agreement must be made prior to planting season by an addendum, which is attached to this agreement.

2. These privileges are granted by the U.S. Fish and Wildlife Service and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations contained therein.

3. Special Conditions: See Attached

Fred E. Shelton  
(Cooperator's Signature)

3-23-07

(Date)

Adam K. Staley  
(Issuing Officer's Signature and Title)

3/26/2007

(Date)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DELAWARE AUDUBON SOCIETY, )  
CENTER FOR FOOD SAFETY, and )  
PUBLIC EMPLOYEES FOR )  
ENVIRONMENTAL RESPONSIBILITY, )

Plaintiffs, )

Case No. 1:06-cv-223

vs. )

Secretary, United States Department )  
of the Interior, DALE HALL, )  
Director of United States Fish )  
And Wildlife Service, and UNITED )  
STATES FISH AND WILDLIFE )  
SERVICE, an administrative agency )  
of the United States Department of the )  
Interior, )

Defendants. )

**DECLARATION OF WILLIAM B. ROSTOV IN SUPPORT OF PLAINTIFFS  
SUMMARY JUDGMENT REPLY**

I, William B. Rostov, state:

1. I am an attorney admitted to practice law in California. I am a senior attorney with Plaintiff Center for Food Safety and counsel for Plaintiffs in this action. I make this declaration based upon my own personal knowledge and if called upon to testify, could and would do so competently.

2. I have been admitted Pro Hac Vice to represent the Center for Food Safety for this case in the United States District Court for the District of Delaware.

3. On July 30, 2007, I sent Freedom of Information Act (5 U.S.C. § 552 (“FOIA”)) requests to the Regional Headquarters for Regions one through six of the Fish and Wildlife Service of the Department of the Interior, requesting any documents pertaining

to Cooperative Farming Agreements for National Wildlife Refuges (“NWR”) within Region 6 for 2007 and 2008, any documents prepared pursuant to the National Environmental Policy Act (“NEPA”) pertaining to genetically modified crops (“GMCs”) from 2004 to the present, any documents pertaining to an “Essential Determination” regarding GMCs from 2004 through the present date, all completed GMC Eligibility Questionnaires, any documents pertaining to summaries of GMC acreage between 2004 and the present date plus any estimates for 2008, any documents containing information regarding the approval or rejection of GMCs from 2004 through the present date, and any documents about GMCs in NWRs from 2004 through the present date.

4. I received a partial response to these FOIA requests that was dated September 17, 2007, including documents from Region Six. Attached as Exhibit 1 to this declaration are some of the documents sent to me by Region Six of the Fish and Wildlife Service. These documents show that the planting of genetically modified, Roundup Ready soybeans and corn have been approved by Region Six for 2007, and in some cases, through 2010 and 2011. On the fax cover sheet included in the response, notes from Dave Linehan state that “No eligibility questionnaires were completed and no other documents found [sic] addressing use of GMCs on Refuges in Region 6.” The response shows that these refuges have no NEPA documents nor compatibility determinations addressing the use of GMCs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 23, 2007

\_\_\_\_\_/s/\_\_\_\_

William B. Rostov